IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

APPEAL NO.431 OF 2001

Mallappa Sadashiv Artal]
Age 19 years, Occ: Hotel]
Waiter, Resident of Sutti]
Taluka Athani, Dist.Belgaum,]
Karnataka State]
(Presently in Kolhapur]
Central Prison, Kolhapur-]
416007)]..Appellant
(Ori.Accused)

Vs.

The State of Maharashtra]..Respondent

...

Mr. B.G.Tangsali (appointed) Advocate for Appellant
Smt.V.R.Bhosale, A.P.P. for the State.

...

CORAM: N.V.DABHOLKAR AND
SMT.V.K.TAHILRAMANI,JJ.

DATE : FEBRUARY 8,2006

ORAL JUDGMENT (PER N.V.DABHOLKAR,J):

1. The accused was tried for the offences punishable under Sections 364, 302 and 201 of Indian Penal Code. At the conclusion of sessions case No.35 of 2000, IInd Additional Sessions Judge, Sangli held the appellant guilty for offence punishable under Section 302 of IPC (i.e. committing murder of Mohan Laxman Kengar) and has

sentenced him to suffer life imprisonment, fine of Rs.100/- in default R.I. for ten days. This appeal under Section 374(2) of Code of Criminal Procedure, 1973, challenges the said judgment and order.

2. According to prosecution story, the deceased and accused were serving together at Hotel Durga of which P.W.8 Ramesh Shetti was Manager. Accused was working as a cook for preparation of tea and deceased Mohan was assigned the duties of cleaning utensils etc. P.W.1 Dnyaneshwar Kengar is the third companion of accused and the deceased who was also working in the hotel at the material time.

. According to prosecution story, there used to be quarrels between the accused and deceased. This is because, deceased used to complain against the accused to the Manager and owner of the hotel that accused deliberately spoiled the milk by squeezing lemon juice in the same. On 5th of October, 1999 at 4.00 p.m. accused and victim together left hotel. Accused informed P.W.1 Dnyaneshwar that they were proceeding for collecting custard apples (Sitaphal). According to prosecution, victim never returned thereafter. P.W.5 Laxman Hattikar who is

related to the victim (husband of his maternal aunt) lodged a report with Sangli City Police Station on 10th October,1999 at 15.15 hours regarding missing of Mohan Kengar since 5th October, 1999 4.00 p.m. It was also informed that on that day, victim had gone away with the accused. This report was registered by Police Head Constable Mr.Rajendra Ranjane (P.W.3).

. Police Inspector Shri.Madan Patil (P.W.9) took up the investigation onto himself on 14th October, 1999. He interrogated the accused immediately after effecting his arrest. It is the claim of the prosecution that accused showed willingness to point out the dead body and accordingly, the dead body was recovered in the precincts of village Ankali and in the agricultural land owned by one Bhimgonda Patil. This location is about 5 kms. away from Sangli City Police Station. It was marshy land surrounded by Subabhul trees. The dead body was in decayed condition practically a skeleton of bones with almost all the flesh having been eaten by wild animals. It is said that the dead body was identified by P.W.2 Mahadevi Kengar (mother of the victim) and also the Manager Shri.Ramesh Shetti (P.W.8).

. Since the Autopsy Surgeon Dr.Sandeep Vanjari (P.W.6) could not give any opinion regarding the cause of death by examining the skeleton, the skeleton was referred to Anatomy Department where it was examined by Dr.Narsinha Herekar (P.W.7). Even Dr.Herekar has not been able to opine about the cause of death but after examination of the skeleton, it is reported that the skeleton was of the bones of human of sex male aged about 14 to 19 years and death was within less than six months prior to examination on 18th October, 1999. A report of the Forensic Science Laboratory at Exhibit-33 which was admitted on record under Section 294 of Code of Criminal Procedure, 1973 shows that upon examination of the skull with mandible in comparison with couple of photographs of deceased Mohan provided for the purpose, upon photographic super imposition of the suitably oriented skull on the face of the victim in the photograph, showed that the skull could have belonged to the person in the photo. Probably, this is the position of possible assistance by Science of Medical Jurisprudence available to support the prosecution case.

. P.W.4 Manohar Kamate is the panch witness and Memorandum Exhibit-17 and Panchanma Exhibit-18 regarding discovery of the skeleton at the instance of the accused, were drawn in his presence.

. Upon submission of charge-sheet, after completion of investigation and after committal of the case, the trial has ended in conviction as above.

3. On reference to either to the cross-examination of prosecution witnesses or to the statement of the accused as recorded under Section 313 of the Code of Criminal Procedure, the defence of the accused is of total denial. In response to question No.21, he said that he had come from Karnataka State by leaving his parents, for the purpose of work. Police have implicated him in a false case.

4. Heard advocate Shri.Tangsali and Smt.Bhosale A.P.P. for the State. Two lawyers together have taken us through the entire evidence as also the reasons recorded by the trial Court while rendering the impugned judgment. By relying upon the evidence of Mahadevi Kengar (P.W.2) as also the reports from the Forensic Science Laboratory at

Exhibits 26 and 33, the trial Court arrived at a conclusion that the identity of the victim was established. By relying upon observations of another Division Bench of this High Court in the matter reported at **1998 Cri.L.J. 306; State of Maharashtra Vs. Vinayak Shivajirao Pol,** the trial Court felt that as in the reported case, also in the matter at hands, non-availability of medical opinion regarding the cause of death did not adversely affect the prosecution case. For the reasons discussed in paragraphs 10 to 12, the trial Court arrived at a conclusion that possibility of suicide and accident, stands ruled out by the fact that dead body was discovered at the instance of the accused and only after his arrest. According to the trial Judge, had it been a case of suicide or accident, the accused would have reported the matter to the police much earlier as he is proved to be the person in the company of victim when victim Mohan was last seen alive. The trial Judge was not inclined to give much importance to the submission of the defence that copy of F.I.R. had reached the Court of the Magistrate at a belated stage. The evidence rendered by P.W.1 Dnyaneshwar, according to trial Judge, stood fortified by the contents in the missing report Exhibit-14 lodged by

P.W.5 Laxman Kengar which indicated the victim to have gone away with the accused much before registration of the crime. Trial Court was also inclined to believe evidence of discovery panch and the trial Court recorded the finding of guilty so far as offence punishable under Section 302 of IPC by observing that following chain of circumstances, is established with firmness and by cogent evidence;

i. Evidence of last seen together (P.W.1 Dnyaneshwar);

ii. Return of accused alone and his hostile behaviour towards P.W.1 and evasive replies to Manager Shri.Shetti (P.W.8);

iii. Discovery of skeleton at the instance of accused and;

iv. Motive;

. Generally, we can say that in the cross-examination of almost all witnesses, except

suggestions denied by all the witnesses, no useful material is drawn by the defence before the trial Court. Advocate Shri.Tangsali therefore, was left with very few options. He could not press into service an argument based on contradictions, omissions and improvements by the witnesses that the witnesses are unworthy of belief. He has, therefore, submitted that there are two patent *lacunae* in the prosecution case. According to him, in the absence of medical evidence, prosecution has not been able to establish the death to be homicidal, beyond all reasonable doubt and unless the death is proved to be homicidal, according to Shri.Tangsali; his client cannot be held guilty of murder. Secondly, advocate Shri.Tangsali pointed out that when discovered, the dead body was totally decayed and it was remainder skeleton without any flesh or skin. As such, the claim of the prosecution that mother of the deceased and Manager Shri.Shetti having identified the victim, is not sustainable. He therefore, urged that his client is entitled to benefit of doubt. According to Advocate Shri.Tangsali, petty skirmishes between co-employees of the hotel is inadequately disproportionate motive for a serious offence like murder.

5. At the outset, we may say that we are in agreement with the trial Court that delay in dispatching F.I.R. to the Court of Magistrate in this case, is insignificant event. This is because F.I.R. lodged by Police Head Constable Rajendra Ranjane (P.W.3) was a technical compliance for setting criminal law in motion. In fact Exhibit-14 the missing report filed by P.W.5 Laxman Kengar is the document of greater importance. The Code lays down the requirement of immediate dispatch of copy of F.I.R. to the Court of Magistrate in order to rule out the possibility of tampering the F.I.R., for the purpose of incorporating colourable and developed story or incorporating or involving more number of accused persons or improving upon the list of witnesses. In the matter at hands, the same is not a case of a fight to which, there are eye witnesses and therefore, there is very little material upon which prosecution could have improved by delay in dispatch of copy of F.I.R. As P.W.5 Laxman had lodged missing report (Exhibit-14) on 10th October, 1999 and said report did refer to the fact that deceased departed hotel in company of the accused, the significance of delay in sending F.I.R. if any, is diminished. Deposition of P.W.1 Dnyaneshwar that he had seen the accused and

deceased going together on 5th October, 1999 at about 4.00 p.m. and deceased having informed him that they were proceeding for collection of custard apples, stands corroborated by the missing report dated 10th October, 1999 lodged by P.W.5 Laxman who is related to the victim. We find no hesitation in believing Dnyaneshwar on that point. As rightly observed by the trial Court, evidence of Dnyaneshwar is supported by Manager of the hotel Shri.Ramesh Shetti. Ramesh Shetti had not only taken a note that deceased had not resumed duties but he had tried to enquire at the residence and this version of P.W.8 Ramesh Shetti is supported by mother of the deceased P.W.2 Mahadevi. P.W.8 Ramesh Shetti has deposed thus;

> . "That I had asked him (accused) as to where Mohan Kengar is though, he had been with him. Because I had learnt from Dnyaneshwar that deceased Mohan had gone with the accused".

. From the narration of Shri.Shetti, although it is evident that he had not seen the couple departing together, he had learnt about such departure from P.W.1 Dnyaneshwar. The evidence of P.W.8 Ramesh Shetti which is convincing in the

light of his subsequent conduct of enquiring the accused of whereabouts of the deceased thus strengthens the evidence of P.W.1 Dnyaneshwar.

. Even about the motive, P.W.1 Dnyaneshwar and P.W.8 Ramesh Shetti are unanimous. The Manager is very specific. According to him, deceased had reported to him about accused spoiling the milk. Similar is the version of P.W.1 Dnyaneshwar. Dnyaneshwar states that accused used to spoil the milk by using lemon juice and this was being reported to the Manager by the deceased and that was the cause for quarrel between the two. Even the mother Mahadevi (P.W.2), although does not speak of other details; states that her son had disclosed about frequent quarrels between him and the accused. It must therefore, be said that the prosecution has brought sufficient evidence on record regarding the possible motive. Motive is an internal state of mind and the same is required to be gathered from the conduct of the accused. Although apparently, the motive appears to be inadequate for a serious offence such as murder, the fact remains that the accused must have been annoyed because of frequent reports about his mischievous conduct of the victim to the Manager or

owner of the hotel.

. There is no serious challenge to the narration of Dnyaneshwar that when he asked the accused about the victim after his return on the same day evening, accused was furious and assaulted him. We must therefore, record that we have no hesitation to concur with the trial Court that prosecution has sufficiently established on record that there was bickering between the deceased and the accused and that on 5th October, 1999 the deceased and the accused had departed together from the hotel and accused alone returned. Deceased was never seen alive thereafter, and it was only on 14th October, 1999 the dead body was discovered. We must say that material so far in addition to report of the Forensic Science Laboratory that skeleton discovered was possibly of Mohan Kengar, is sufficient to roll the ball in the court of the accused. It was necessary for him to explain the point of time when the victim departed his company. Accused has offered no such explanation.

6. Coming to the point of challenge raised by Advocate Shri.Tangsali, so far as identification of the victim is concerned, even without referring to

the reports of the Forensic Science Laboratory which cannot be conclusive in the facts and circumstances of the case, Manager and mother of deceased have identified the skeleton. On this aspect, Exhibit-14 renders useful assistance to the prosecution. This is a report lodged by P.W.5 Laxman four days prior to the discovery of skeleton. It gives full description of the deceased as also of his wearing apparels. The deceased was said to be wearing blue T-shirt bearing letters "Kargil" on one side and National Flag and he was wearing a white Burmuda pant. On reference to discovery and panchnama Exhibit-17 and Exhibit-18, at least blue T-shirt was still there on the dead body and for those who had daily seen the victim in the past, this was sufficient to identify the victim. We are therefore, not inclined to look to the identification evidence of mother and Manager of the victim with disbelief.

7. No doubt on record, there is no medical opinion available that can infer the death to be homicidal. We do not have any eye witnesses describing the manner in which the victim was consigned to death, so that we can record a finding of death to be homicidal in the absence of medical opinion. In

the light of other circumstances, the trial Court has felt that absence of medical evidence to be insignificant. We must say that the factual details surrounding dead body and its discovery as available on record, sufficiently ruled out the possibility of suicide, accident or natural death. The victim was practically a child aged 14 years and natural death at that age can easily be ruled out. To term the death to be suicidal, there is no indication that any material which could have been used for the purpose of committing suicide was around the dead body, such as a rope for hanging (suicide by strangulation) or tin of poison and this is not a death by burns. The location as can be seen from Exhibits-17 and 18 is neither the residential house nor a road with traffic but the same is at a location inside the agricultural land and at considerable distance from the main road. This cannot therefore, be said to be a case of road accident. Dead body is not found in a well. It was lying in the marshy land but in supine position. The victim found in prostrate position at least could have created a doubt of death by suffocation in the marshy area. Circumstances surrounding the skeleton therefore, sufficiently ruled out the possibility of death to be either

suicidal or homicidal. Therefore, even in the absence of medical evidence and by not referring to confessional part in the statement of the accused as contained in Exhibit-17, it will not be unsafe to infer that death was homicidal death.

8. Prosecution having established death to be homicidal, accused to be having an axe to grind against the victim, having brought on record the evidence of victim last seen alive together with the accused, the only inference that is required to be drawn, is that accused must have consigned the victim to death unless the accused could offer an explanation either regarding the cause of death or regarding the time when he parted company with the victim. Even without assistance of discovery panchnama boasting discovery of skeleton at the instance of information given by the accused, prosecution can succeed in bringing home the guilt.

. Advocate Shri.Tangsali has placed reliance upon the judgment of the Supreme Court in the matter of **Bakshish Singh Vs. The State of Punjab; AIR 1971 S.C.2016,** wherein it is observed that "recovery of dead body by the police on information given by the accused is not a conclusive circumstance, but it

merely raises strong suspicion against him." In addition to circumstances held firmly established as described hereinabove, the benefit that is available to prosecution by evidence of discovery at the instance of the accused, would be sufficient to establish the guilt, although discovery by itself may not be conclusive. In the reported matter, victim was an adult person. In the matter at hands, the victim is child aged 14 years and the responsibility to explain disappearance of the child which was taken by the accused with him, was heavier.

9. For the reasons discussed hereinabove, we find no reason to disturb the finding, conviction and sentence as recorded by the trial Court. Appeal therefore, fails.

10. The appeal is dismissed by confirming the judgment and order dated 23.4.2001 delivered by IInd Additional Sessions Judge, Sangli in Sessions Case No. 35 of 2000.

. Registrar (Judicial) shall ensure supply of certified copy of this judgment, free of costs, to the appellant-prisoner through prison authorities.

. Professional charges of Advocate Mr.Tangsali who conducted the appeal for the prisoner at the cost of State, are quantified at Rs.2500/-.

[N.V.DABHOLKAR, J.]

[SMT.V.K.TAHILRAMANI,J.]